

# County Issues Workgroup

## CONSENSUS ITEM

### Draft – For Discussion Only

ITEM NO: 5 Version Date: September 10, 2001 Revision

ITEM TITLE: Application of the term “Covered Entity” within a county government entity

#### Premise

When applying the HIPAA rules to a County government entity all rules should be applied at the health care component level, except where stated otherwise in the Privacy Rules. Any reference to health care provider, health plan, health care clearinghouse, or covered entity should be interpreted as a reference to the County’s health care provider, health plan, or health care clearinghouse components, rather than the County government as a whole.

#### Reasoning

The HIPAA rules define a “covered entity” as “a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a HIPAA covered transaction.” [160.103]

If we assume a particular County performs at least one of the three functions described in the definition of a covered entity, and we also assume the same County electronically transmits at least one HIPAA covered transaction type during the performance of that function, it is clear the health plan, health care clearinghouse, or health care provider function performed by the County is subject to the HIPAA rules.

However, when a County government performs a health care function, that function is generally performed within a distinct division of the county government structure. The county as a whole performs many additional functions beyond the three functions mentioned in the definition of a covered entity. With this in mind, it is somewhat ambiguous whether the terms health plan, health care clearinghouse, health care provider and covered entity are meant to refer to the county as a whole, or only the division of the County that performs a specific covered function

For example, if a County operates a Hospital, does the term health care provider only pertain to the County Hospital, or is the County as a whole considered the health care provider, i.e. is the County Hospital the covered entity, or is the County as a whole the covered entity?

The HIPAA Privacy Rules define a hybrid entity as “... a single legal entity that is a covered entity and whose covered functions are not its primary function.” [164.504] Since a County government is a hybrid entity, (see Consensus Item I), it is clear that a County government is also a type of covered entity, at least with respect to the Privacy Rules. In addition, the Privacy Rules go on to state that most references in the Privacy

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Rules to a “covered entity”, a “health plan”, a “covered health care provider”, or a “health care clearinghouse” should be interpreted as a reference to the health care component of a hybrid entity, rather than the central organization [164.504(c)(1)].

This would seem to help clarify when a County and its various health care related divisions should and should not be considered a covered entity, except the scope of the “hybrid entity” and “health care component” definitions, along with the related hybrid entity and health care component standards, are specifically restricted to subpart E of the HIPAA rules. Subpart E being the Privacy Rules.

Though it is clear when a county and its covered components are and are not covered entities with respect to the Privacy Rules, there is no similar clarification made with respect to any of the other HIPAA rules. Lacking any clear guidance from the rules, it would seem the interpretation of what constitutes a covered entity, a health plan, a health care clearinghouse, or a health care provider, within the context of County government, would be based on reasonableness. The use of a reasonableness standard is supported by the various preambles to the HIPAA rules, and by the Guidance to the HIPAA Privacy Rules that was provided by the Office for Civil Rights. Both the preambles and the Guidance repeatedly emphasize the use of a reasonableness standard.

Traditionally, the term “health care provider” is used to refer to the licensed organization that performs health care services. In the case of a County organization, this would normally be a division of the County, e.g. a county hospital, public health department, mental health department, or other licensed entity. Additionally, provider audits, accreditation, and regulatory reporting requirements are generally performed at the County division level. Therefore, it seems reasonable to consider the health care provider components of a County separate covered entities.

Similarly, it would seem reasonable to consider County operated health plans and clearinghouses separate covered entities, provided they are operated as separate functional units.

*Conclusion:* It seems reasonable to believe County divisions that perform health plan, health care clearinghouse, or health care provider functions, should be considered separate covered entities with respect to the HIPAA rules, except where specifically stated otherwise in the Privacy rules.

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#### Implications

*Transaction Rules:* The HIPAA Transaction Rules would be applied to a County's health care components, i.e. health plan, health care clearinghouse, and health care provider functions.

The General Rule for a covered entity [162.923(a)], under the Transaction Rules, states "... if a covered entity conducts with another covered entity (or within the same covered entity), using electronic media, a transaction for which the Secretary has adopted a standard under this part, the covered entity must conduct the transaction as a standard transaction." If a County health care component is considered the covered entity, the phrase "within the same covered entity" would be interpreted to apply to the County's health care component, not the county as a whole. Any HIPAA covered electronic transactions conducted within a given county, between a health care component and a non-health care component, or between two non-health care components, would not be required to conform to the HIPAA transaction standards.

For example, since a County Department of Social Services (DPSS) is not considered a health care component, (see Consensus Item 2) any electronic Medi-Cal eligibility inquiries sent to DPSS by a County hospital would not be required to conform to the HIPAA transaction standards.

On the other hand, a HIPAA covered electronic transaction conducted within a single County health care component, or between two separate County health care components, would be required to comply with the HIPAA transaction standards.

For example, a County hospital that sends electronic claims to a health plan that is run by the same County would be required to use the HIPAA transaction standards.

*Privacy Rules:* The Privacy Rules clearly state when the Privacy Rules should be applied to a County's health care components, and when they should be applied to the County government as a whole. The interpretation set forth in the above premise would not impact the manner in which the Privacy Rules should be applied.

The Privacy rules state that a non-health care component of a hybrid entity becomes part of a health care component of the same hybrid entity, whenever the non-health care component enters into a business associate relationship with a health care component, and that relationship involves the use or disclosure of protected health information (see consensus item #3). Since the hybrid entity definition, and related standards, are part of the Privacy Rule, the business associate relationship that makes a County's non-health care component part of a health care component, would not apply outside the Privacy Rules. That is, a County's non-health care components would never be considered part of one or more health care components when interpreting the

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Transaction Rules or Preliminary Security Rules.

*Proposed Security Rules:* The proposed HIPAA Security Rules, as currently written, would be applied to a County's health care components, i.e. health plan, health care clearinghouse, and health care provider functions.

#### ITEM CHRONOLOGY

Workgroup Draft: 08/30/2001    Workgroup Approved: 09/10/2001

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#### SUPPLEMENTAL MATERIALS

Links to supporting legal and content expert opinions.